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October 4, 2016

RECORD OF ORAL HEARING
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ROBERT BOSCH LLC and DAIMLER AG,
Petitioner,

vs.

ORBITAL AUSTRALIA PTY LTD.,
Patent Owner.

Case IPR2015-01258 (Patent 5,655,365)

Case IPR2015-01259 (Patent 5,655,365)

Technology Center 3700

Oral Hearing Held On: Monday, August 29, 2016

BEFORE: KEN B. BARRETT; JEREMY PLENZLER (via video link); and AMANDA F. WIEKER, Administrative Patent Judges.

The above-entitled matter came on for hearing on Monday, August 29, 2016, at 9:00 a.m., Hearing Room A, taken at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

REPORTED BY: RAYMOND G. BRYNTESON, RMR,
CRR, RDR

APPEARANCES:

ON BEHALF OF THE PETITIONER:

LIONEL M. LAVENUE, ESQ.
Finnegan, Henderson, Farabow, Garrett
& Dunner, LLP
Two Freedom Square
11955 Freedom Drive
Reston, Virginia 20190-5675
571-203-2700

DAVID C. REESE, ESQ.
AARON L. PARKER, ESQ.
Finnegan, Henderson, Farabow, Garrett
& Dunner, LLP
901 New York Avenue, N.W.
Washington, D.C. 20001-4413
202-408-4000

BRETT N. WATKINS, ESQ.
Quinn Emanuel Urquhart & Sullivan, LLP
777 6th Street, N.W.
11th Floor
Washington, D.C. 20001-3706
202-538-8100

ON BEHALF OF THE PATENT OWNER:

DAVID M. MAGEE, ESQ.
ANDREW W. SCHULTZ, ESQ.
Pepper Hamilton LLP
High Street Tower
19th Floor
125 High Street
Boston, Massachusetts 02110-2736
617-204-5150

P R O C E E D I N G S

(9:00 a.m.)

JUDGE BARRETT: Be seated. Good morning, everybody. This is the final hearing in IPR2015-01258 and IPR20150-1259, Robert Bosch and Daimler versus Orbital Australia.

I'm Judge Barrett here in Alexandria. Next to me at the bench is Judge Wieker. And on the monitors is Judge Plenzler. He is located in Detroit.

So let's start with the parties appearances.
Petitioner?

MR. LAVENUE: For Petitioner, Lionel Lavenue from Finnegan for the Petitioner.

JUDGE BARRETT: And who do you have with you today?

MR. REESE: My name is David Reese, from Finnegan, also representing the Petitioner.

JUDGE BARRETT: Patent Owner?

MR. MAGEE: Good morning, Your Honors. David Magee, with Pepper Hamilton, for Patent Owner Orbital. And with me today is Andrew Schultz.

JUDGE BARRETT: Thank you. Welcome. Good to have everybody here.

Just a few preliminary matters. Each party will have 30 minutes total time to present their arguments.

1 Petitioner bears the burden so will go first and may reserve
2 time for rebuttal, if you so desire. Then Patent Owner will
3 present its case. And then Petitioner, if you have any time
4 left saved, you may present rebuttal.

5 For the clarity in the transcript and because we
6 have a remote judge, it is very helpful if you identify any
7 slides that you are putting up, demonstratives or pages from
8 the record. I believe Patent Owner didn't present
9 demonstratives but will be using the record.

10 We have the records in front of us. So, everybody,
11 any time you are looking at a page, if you would clearly state
12 where you are in the record, we can follow along. I believe
13 that's it.

14 If there are no questions, Petitioner, you may
15 begin.

16 MR. LAVENUE: Thank you, Your Honor. So,
17 Your Honor, I have some slides here that we printed out.
18 Would you like a copy or do you already have copies?

19 JUDGE BARRETT: We have copies.

20 MR. LAVENUE: Okay. Great. And I would like
21 to reserve three minutes for rebuttal, please.

22 JUDGE BARRETT: How much?

23 MR. LAVENUE: Three minutes, please.

24 JUDGE BARRETT: Okay.

1 MR. LAVENUE: Thank you. So today this is an
2 interesting IPR in that our issues are pretty simple. On slide
3 2 we have outlined that we have the instituted claims and then
4 also the claim construction issues and the prior art.

5 In this proceeding the prior art is quite simple
6 because the Patent Owner has not objected to any of the
7 arguments regarding the prior art, only regarding the claim
8 construction.

9 So if the Board's preliminary claim construction is
10 correct, then the Patent Owner concedes invalidity. If the
11 Petitioner's claim construction is correct, which is slightly
12 different from the Board's, then there is also invalidity.

13 So it is only if the Patent Owner's different claim
14 construction is accepted by the Board would there be an issue
15 as to any of the invalidity arguments before us. So for that
16 reason we focus strictly on the one disputed issue before this
17 Board, and that is the claim construction, since all of the
18 issues relating to the prior art have been conceded and are
19 undisputed in the proceeding.

20 On slide number 3 we see the instituted grounds.
21 And so as we note at the bottom, exactly what I just said,
22 there is no issue here except for claim construction.

23 As far as getting to the claim construction issue,
24 the claimed invention here relates to a way of helping an
25 automobile to save emissions or to have better emissions

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